Supreme Court, U.S.
FILED

(1) 981644 FEB 2 1999

NO. OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1999

Bennet D. Cecil, MD

Petitioner

Vs.

Laura Whitt, Irv Foley, Debra Schoo Cecil,

Respondents

On petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

Bennet D. Cecil, MD
Pro Se
2204 Eastbridge Court
Louisville KY 40223
(502) 244-0103

3799

QUESTIONS PRESENTED

1. Do state prosecutors have absolute immunity to knowingly proffer perjured testimony and withhold exculpatory evidence as claimed by the Kentucky Attorney General?

2. Do state prosecutors have absolute immunity to maliciously prosecute an unemployed and hospitalized physician for being behind in his child support payments after paying nearly $300,000 in alimony and child support?

3. Can a prosecutor and a private attorney legally blackmail a citizen when he files a civil rights suit in federal court?

4. Are there two standards of law in the United States-one for citizens and the other for members of the Bar?

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Petitioner Bennet D. Cecil, MD respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered on the above-entitled proceeding on November 4, 1998 (App. at I)

OPINION BELOW

The opinion below is attached:

STATEMENT OF JURISDICTION

The United States Supreme Court has jurisdiction over all cases heard in lower courts including those where a citizen's basic civil rights guaranteed by the Constitution are violated.

STATUTORY PROVISIONS INVOLVED

US Code title 18 Sec. 241. Conspiracy against rights

US Code title 18 Sec. 1622. Subornation of perjury

US Code title 18 Sec. 242. Deprivation of rights under color of law

US Code title 18 Sec. 1623. False declarations before grand jury or court

UNITED STATES CONSTITUTION CITED

Amendment V

Amendment IX

Amendment XIV

STATEMENT OF THE CASE

In 1996, Debra Schoo Cecil's (now Hibberd) influential Louisville attorney, Irv Foley persuaded Assistant Commonwealth Attorney, Laura Whitt to prosecute the appellant for felonious non-support. The appellant had been unemployed and ill, was currently paying his owed child support and had previously paid approximately $290,000 in alimony and child support. The amount of child support owed had not even been determined yet by the trial judge, who later ruled on the amount in April 1997. The appellant filed suit in Federal Court against Irv Foley, Debra Schoo Cecil (now Hibberd) and Laura Whitt for malicious prosecution, conspiracy against rights, subornation of perjury and perjury. In the spring of 1997 Irv Foley persuaded prosecutor Laura Whitt to blackmail the appellant to drop his federal lawsuit of December 1996 against the three defendants (Exhibit A). Whitt had previously offered to dismiss the case without prejudice (Exhibit B), and the appellant had already accepted her offer (Exhibit C). Irv Foley admitted to the appellant's attorney, David Vish, that he did indeed ask Laura Whitt to blackmail the appellant and David Vish wrote a memo documenting the confession (exhibit D). The Inquiry Tribunal of the Kentucky Bar Association has charged Laura Whitt seven months ago with unethical and unprofessional conduct (exhibit E), but the Kentucky Bar has not disciplined her. The Kentucky Bar Association has refused to discipline Irv Foley even though there is proof that he conspired against the appellant's civil rights to be free from malicious prosecution and criminal coercion.

It appears that the Bar will protect its members at all costs. The lower Federal Court refused to hear the case, as did the US Court of Appeals. The Court of Appeals specifically ordered that the case not be published so that the cover up continues to this day.

Debra Hibberd "bought justice" by paying more than $50,000 to attorney Irv Foley to have the appellant maliciously

prosecuted for a crime he did not commit. Debra Hibberd committed perjury before the Jefferson Grand Jury at the direction of Irv Foley and Laura Whitt on December 12, 1996(Exhibit F). This led to a false criminal indictment of the appellant. Laura Whitt arranged to have the tape recorder of the proceeding turned off during part of the grand jury procedure and refused to allow the appellant to testify at the hearing, denying the appellant due process. The appellant's attorney, David Vish had previously requested in writing that the Appellant be allowed to testify before the grand jury. Laura Whitt and her supervisor, Commonwealth Attorney Dave Stengel refused to even allow the appellant to file a complaint against Debra Hibberd's perjury (exhibit G). They both know she lied under oath and both are her accomplices. Laura Whitt's attorney Ben Chandler, Kentucky Attorney General, states that she can proffer perjured testimony and withhold exculpatory evidence with impunity (exhibit H). She is above the law. The Kentucky Attorney General, Ben Chandler abused the power of his office by trying to intimidate the appellant by petitioning the federal court to make the appellant pay Laura Whitt's legal expenses if the appellant did not drop his federal case (exhibit H).

The Supreme Court of the United States has jurisdiction over this case because of the multiple violations of constitutional law. The appellant's rights guaranteed by the 5thAmendment were grossly violated.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due

process of law; nor shall private property be taken for public use, without just compensation.

His right to lead a life free of harassment from his ex-wife and her lawyers provided to

him by the 9th amendment were violated.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The appellant's rights guaranteed by the 14th Amendment were grossly violated.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such

male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.
Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.
Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.
Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.
The appellees broke several federal laws.The appellees conspired against the appellant's civil rights by threatening him when he filed suit in federal court.

US Code title 18 Sec. 241. Conspiracy against rights

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or

privilege so secured - They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.
Irv Foley and Laura Whitt are guilty of violation of title 18 of US code 1622 forbidding subornation of perjury. They both knew Debra Hibberd was going to lie under oath and they made certain that she would be free of prosecution for perjury.
US Code title 18 Sec. 1622. Subornation of perjury

Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined under this title or imprisoned not more than five years, or both.
Irv Foley and Laura Whitt are guilty of violation of title 18 of US code section 242 forbidding deprivation of rights under color of law. Laura Whitt is not entitled to immunity solely because she is a prosecutor, because she was deliberately breaking the law. Just as a policeman in uniform can be prosecuted for slaughtering an innocent citizen, a prosecutor is not immune to suit when she acts with malice, breaks the law and uses her office for evil purposes. Irv Foley abused his power as an officer of the court when he committed the crimes above and he is not immune to prosecution. Federal law specifically forbids the deprivation of rights under the color of law.
US Code title 18 Sec. 242. Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or

protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

Debra Schoo Cecil (now Hibberd) is guilty of false declaration before a grand jury forbidden by title 18 of US code section 1623.

US Code title 18 Sec. 1623. False declarations before grand jury or court

- (a) Whoever under oath (or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined under this title or imprisoned not more than five years, or both.
- (b) This section is applicable whether the conduct occurred within or without the United States.
- © An indictment or information for violation of this section alleging that, in any proceedings before or

ancillary to any court or grand jury of the United States, the defendant under oath has knowingly made two or more declarations, which are inconsistent to the degree that one of them is necessarily false, need not specify which declaration is false if -

- (1) each declaration was material to the point in question, and
- (2) each declaration was made within the period of the statute

of limitations for the offense charged under this section. In any prosecution under this section, the falsity of a declaration set forth in the indictment or information shall be established sufficient for conviction by proof that the defendant while under oath made irreconcilably contradictory declarations material to the point in question in any proceeding before or ancillary to any court or grand jury. It shall be a defense to an indictment or information made pursuant to the first sentence of this subsection that the defendant at the time he made each declaration believed the declaration was true.

- (d) Where, in the same continuous court or grand jury proceeding in which a declaration is made, the person making the declaration admits such declaration to be false, such admission shall bar prosecution under this section if, at the time the admission is made, the declaration has not substantially affected the proceeding, or it has not become manifest that such falsity has been or will be exposed.
- (e) Proof beyond a reasonable doubt under this section is sufficient for conviction. It shall not be necessary that such proof be made by any particular number of witnesses or by documentary or other type of evidence.

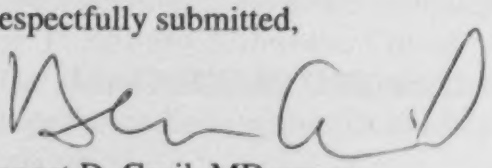
The appellant brings his case to the attention of the Supreme Court of the United States although his experience with the American legal system gives him little hope that the Court will agree to examine his case. Because two of the defendants are lawyers, this case has not been given one minute in an open court of law. It has been covered up twice because two of the defendants are attorneys even though there is incontrovertible proof that they committed crimes. The Kentucky Bar Association, the Kentucky Attorney General, the federal district court, the US Court of Appeals have all tried to bury this case which shows attorneys at their worse. Now the United States Supreme Court must decide whether to protect their fellow attorneys who have committed felonies or to enforce the law equally as they have sworn to do.

There may be one set of laws but there are two legal standards practiced in this country. Ordinary citizens have innumerable laws that they must obey. However attorneys enjoy the unspoken and unwritten right to violate a citizen's basic constitutional rights with impunity because the courts protect them. Justice is a commodity in America. It is bought and sold in United States courtrooms like toothpaste and toilet paper at K-Mart. A person with money can get away with murder. A person without money goes to jail.

After examining Laura Whitt's blackmail letter and Irv Foley's admission to David Vish of criminal coercion, the Justices of the Supreme Court of the United States can only conclude that this case must be litigated and not covered up. The Supreme Court should put a muzzle on prosecutors who gleefully assert they have absolute immunity to suborn perjured testimony, withhold exculpatory evidence and even tamper with evidence by turning off the recording device of a grand jury proceeding. The appellant cannot expect the highest court of law in the United States to defend the US Constitution and federal statutes when the lower judges refuse

to do so. His previous cries for justice have fallen on deaf ears. He petitions the US Supreme Court for a writ of certiorari.

Respectfully submitted,



Bennet D. Cecil, MD pro se

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
FILED
BENNET D. CECIL, MD,
NOV 4 1998
Plaintiff-Appellant, LEONARD GREEN, Clerk
V. ORDER

LAURA WHITT; IRV FOLEY; DEBRA
SCHOO CECIL,
NOT RECOMMENDED FOR FULL-TEXT
PUBLICATION
Defendants-Appellees. Sixth Circuit Rule 24 limits citation to specific situations.
Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited. a copy must be served on other parties and the Court. This notice is to be prominently displayed if this decision
is reproduced.
Before: MERRITT and COLE, Circuit Judges; EDMUNDS, District Judge.*
This is an appeal from a judgment dismissing a civil rights complaint filed under 42 U. S.C. §§ 1983 and 1985 for failure to state a claim for relief This case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).
In 1996, Kentucky resident Dr. Bennet Cecil filed a complaint for monetary damages against a state court prosecutor (Laura Whitt), Cecil's former wife (Debra Schoo Cecil) and her attorney (Irv Foley). The parties moved to dismiss the complaint and Whitt sought sanctions under Fed. R. Civ. P. 11. The district court granted the motions of all defendants to dismiss the complaint but denied the motion for sanctions. Cecil took an appeal from this judgment.

II

The lone issue on appeal is the propriety of the district court's conclusion that Cecil's complaint failed to state a claim for relief against any named defendant. This court reviews de novo a decision to dismiss a complaint pursuant to Fed. R. Civ. P. 12(b)(6). *Sistrunk v. City of*

*The Honorable Nancy G. Edmunds, United States District Judge for the Eastern District of Michigan, sitting by designation.

A -

Strongsville, 99 F.3d 194, 197 (6th Cir. 1996), *cert. denied*, 117 S. Ct. 2409 (1997). A de novo examination of the record and law supports the district court's decision in all respects. The facts as taken from Cecil's complaint are assumed to be true for purposes of this review. Cecil's complaint centers around Kentucky state court proceedings against him for nonpayment of child support to his former wife, Debra Schoo Cecil. Cecil contends that Whitt, in her capacity as an attorney for the Commonwealth of Kentucky, improperly presented tainted evidence to the grand jury that made Cecil the subject of the nonsupport indictment of which charge Whitt knew Cecil to be innocent. Cecil alleges that this evidence consisted, in whole or in substantial part, of perjured testimony by Debra Schoo Cecil and her attorney Foley. Cecil also avers that Debra Schoo Cecil and Foley affirmatively misrepresented Cecil's financial status in another Kentucky state court proceeding that apparently resulted in an order of attachment for the assets of Cecil's medical practice. Cecil contends that the defendants conspired with one another to carry out these acts against him in violation of his civil rights in general and specifically in his capacity as a member of a protected class, namely, physicians.

The district court construed Cecil's complaint as one seeking relief pursuant to 42 U.S.C.§§ 1983 and 1985. The court found

Whitt to be absolutely immune from this action brought against her in her capacity as a state court prosecutor. The court also concluded that the claims against Debra Schoo Cecil and Foley should be dismissed as there was no showing that they were state actors" for purposes of the civil rights statutes. On appeal, Cecil seeks review of the judgment in its entirety. It is initially noted that the district court properly dismissed Cecil's claims brought under 42 U.S.C. § 1985. Section 1985(3) creates a claim for relief for damages against private persons who conspire to deprive a plaintiff of his constitutional fights. The claim so created does not require state action; as an essential element, however, "there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." *Griffin v. Breckenridge,* 403 U.S. 88, 102 (1971). There is ample case law strongly to suggest that physicians

are not a protected class under § 1985(3). *See, e.g., Ward v. St. Anthony Hospital,* 476 F.2d 67 1, 676 (10th Cir. 1973).
The § 1983 claims against Whitt were also properly dismissed. The district court correctly noted that a state court prosecuting attorney is shielded from a civil rights action for monetary damages for acts taken in her purely prosecutorial, as opposed to an advisory or investigatory, role. *Imbler v. Pachiman,* 424 U.S. 409, 431 (1976). Cecil's allegations against Whitt are exclusively directed to her actions acting in her capacity as an advocate for the state in judicial proceedings.
The claims against Debra Schoo Cecil and Foley were just as properly dismissed. Cecil's entire complaint is directed to their alleged misuse of state processes that are nowhere said to be unconstitutional. "(P]rivate misuse of a state statute does not describe conduct that can be attributable to the State" for purposes of § 1983 relief. *Lugar v. Edmondson Oil Co.,* 457 U.S. 922, 941 (1982). Other aspects of Cecil's complaint and appellate filings are requests for federal district court review of

the merits of a Kentucky state court judgment. Review of final determinations in state judicial proceedings can be obtained only in the United States Supreme Court. *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 476 (1983), 28 U.S.C. § 1257. A United States District Court lacks the authority to review final state court judgments in judicial proceedings. *Feldman,* 460 U.S. at 482.
Accordingly, the district court's judgment is affirmed. Rule 9(b)(3), Rules of the Sixth Circuit.
ENTERED BY ORDER OF THE COURT
/ Signed by Leonard GreenClerk

CLERK CINCINNATI, OHIO 45202-3988 (513) 564-7037
Filed: December 7, 1998
Jeffrey A. Apperson
Western District of Kentucky at Louisville
U.S. District Court
601 W. Broadway
4th Floor U.S. Courthouse
Louisville, KY 40202

RE: 97-5944
Cecil vs. Whitt
District Court No. 96-00810

The mandate issued in the above-styled case.
Please be advised that the certified record will be sent under separate cover.
Very truly yours,
Leonard Green, Clerk
Diane Schnur
Deputy Clerk

cc:

Hon. Thomas B. Russell
Bennet D. Cecil
Mr. Stuart W. Cobb
Mr. Edward K. Black

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NO: 97-5944
Filed: December 7, 1998
BENNET D. CECIL, M.D.
Plaintiff - Appellant
v
LAURA WHITT; IRV FOLEY; DEBRA SCHOO CECIL
Defendants - Appellees
Pursuant to the court's disposition that was filed 11/4/98 the mandate for this case hereby issues today.
True Copy.
COSTS: NO COSTS Attest:

Filing Fee $
Printing $
Total $ (S/Diane Schnur)
Deputy Clerk

(EXHIBIT A)
MAR-26-97 WED 9:40 AM R. DAVID STENGEL
0
R. David STENGEL
COMMONWEALTH'S ATTORNEY
514 WEST LIBERTY (502) 695-2300
LOUISVILLE, KENTUCKY 40202-2887 FAX (W)
595-4650

March 26, 1997

Honorable David Vish
Parrent and Vish
700 Kentucky Rome Life Building
Louisville, Kentucky 40202

VIA: Fax Transmission to (502) 587-7836
RE: Commonwealth of Kentucky vs Bennett Cecil

Dear Mr. Vish:
I am writing to notify you that any and all offers previously made by the Commonwealth are hereby revoked.
The Commonwealth now offers to dismiss without prejudice the above referenced indictment on the following conditions:
I., The Defendant pay $5700.00 by 03/27/97.
2. The Defendant stipulate as to probable cause for the indictment.

3. The Defendant make a motion dismissing the complaint filed in Federal Court naming Laura L. Witt, Debra Cecil and the Honorable Irv Foley as defendants.

This offer will remain open until the next hearing date of March 27, 1997 and then withdrawn if not accepted.

Sincerely,
S/LAURA L.WITT
Assistant Commonwealth's Attorney
LLN/aa

(EXHIBIT B)
OFFICE OF
R. DAVID STENGEL
COMONWEALTH'S ATTORNEY
514WEST LIBERTY (502) 595-2300
LOUISVILLE, KENTUCKY 40202-2887 FAA (502) 595-4650
March 19, 1997

Honorable David Vish
700 Kentucky Home Life Building
Louisville, Kentucky 40202

VIA: Fax Transmission to (502) 587-7836
Hard Copy through U.S. Mail

RE: Commonwealth of Kentucky vs Bennett Cecil

Dear Mr. Vish;
I am writing to convey the Commonwealth's offer in the above referenced case. The Commonwealth agrees to dismiss without prejudice the charge of Flagrant Non-Support on the condition that the defendant pay his child support arrearage in full.
I am aware that this arrearage will be determine d by Judge Shake's ruling on the parties, Exceptions to the Commissioner's Report. This offer will expire at 4:00 p.m. on the 26th day of March, 1997. If you have any questions you may contact me at the above-listed phone number.
Sincerely,

(S/ Laura Witt)
LAURA L. WITT
Assistant Commonwealth's Attorney

(EXHIBIT C)
ATTORNEYS AT LAW
KENTUCKY HOME LIFE BUILDING
239 SOUTH FIFTH STREET, SUITE 700
LOUISVILLE, KENTUCKY 40202
(502) 584-7500

HOMER P^PtFt9NT IIIFACS114IL9 587-7036
COUNSELDAVID L. VISH HOMER PARRENT, JR.
A. WHITNEY THACKER
March 20,1997

No. Laura,Witt VIA FACSIMILE: 595-4650
Assistant Commonwealth Attorney AND FIRST CLASS MAIL
514 West Liberty Street
Louisville, XY 40202-2887
RE: Commonwealth v Bennet D. Cecil
Dear Ms. Witt:
Thank you for your letter of March 19, 1997. My client accepts your offer to dismiss without prejudice the charge of flagrant non-support on the condition that he pay his child support arrearage in full.
I further appreciate the lack of deadline due to the recent pleading I filed before Judge Shake that shows under his current pay order and his' current net pay by monthly it is impossible for him to pay both child support and maintenance, because it resulted in a negative balance. Therefore, I would like to pass the arrearage question to Judge Shake and let Judge Shake rule upon the method and manner and the amount

of arrearage and how paid. Also be advised that Dr. Cecil has recently amended his pay order to 50% of his net pay to Debra Cecil which should ensure regular payments so long as he continues to work.
I sincerely appreciate you responding to my discovery and letter in such a prompt and favorable fashion.
I plan on having Dr. Cecil at the Pre-Trial scheduled before Judge Potter this Friday, March 21st at 12:30 p.m., at which time we will advise the Court of our agreement.
Sincerely,
(S/ David Vish)
David L. Vish
DLV/pgc
cc: Dr. Ben Cecil
C:\wp51\d@t&\dvc&&n\witt.ttr

(EXHIBIT D)
MEMO
TO: Cecil File
DATE:4-11-97

I spoke with Irv Foley today. Irv was extremely upset, raised his voice at me in a number of times. All he wanted to talk about was the Federal suit and all I wanted to talk about was the ability to go see Gordon Wright and the Trust documents per the authorization. Irv continued to talk about the 5 million dollar lawsuit filed by Ben pro se, was interfering with his ability to obtain credit and/or it was on his credit report. He intimated that he thought that I was involved in the lawsuit. I told him that no initially that I was not, nor did I think the case had any merit until the March 26, 1997 offer by Laura Witt which contained a condition that Laura Witt, Debra

Cecil and Irv Foley be dismissed. Irv indicated that he had spoken to Laura Witt about that and that was his idea. Later in the day Ben Cecil during a conversation asked me what Irv and I talked about and I had to tell him and I did. (EXHIBIT E)
RECEIVEDJUN 151998
SUPREME COURT OF KENTUCKY
KBA FILE 6498
KENTUCKY BAR ASSOCIATION COMPLAINANT

V. CHARGE

LAURA L. WITT RESPONDENT
MEMBER NO. 84950
Comes the Inquiry Tribunal pursuant to SCR 3.190 and charges that Laura L. Witt, a member of the Kentucky Bar Association, member no. 84950, who was admitted to the practice of law in this Commonwealth on October 22, 1993, whose last known address is 514 West Liberty Street, Louisville, Kentucky 40202, engaged in unprofessional conduct and unethical behavior under the following facts and circumstances:
Count I
In December 1996, Dr. Bennet D. Cecil ("Dr. Cecil") was indicted by a Jefferson County Grand jury on charges of flagrant non-support. [(Commonwealth of Kentucky v. Bennet D. Cecil, Jefferson Circuit Court, Case No. 96-CR-2926 (the "criminal case")].
The Respondent, Assistant Commonwealth Attorney, was assigned the responsibility of representing the Commonwealth of Kentucky in the criminal case against Dr. Cecil.
After Dr. Cecil was arraigned on the indictment, Dr. Cecil instituted a civil action against the Respondent in the United StatesDistrict Court for the Western District of Kentucky, styled: Bennet D.Cecil v. Laura Witt, et al., al., Case No. 96-C

V-810-R (the "federal case").The federal case alleged that the Respondent and others conspired to deprive Dr. Cecil of rights guaranteed under the federal constitution by presenting false testimony to the grand jury, and by preventing Dr. Cecil from testifying before the grand jury in the criminal case.
While the federal case was pending, the Respondent sent a letter dated March 26, 1997 to Dr. Cecil's attorney of record in the criminal case, Mr. David Vish, Esq. (A copy of the Respondent's March 26, 1997 letter is attached hereto as KBA Exhibit 1.)
In her March 26, 1997 letter, the Respondent offered to dismiss the criminal charges against Dr. Cecil if, among other things, Dr. Cecil would agree to stipulate that there was probable cause for the indictment, and that Dr. Cecil would dismiss the federal case against the Respondent and the other party-defendants.
SCR 3.130-1.7 provides in part that: "[a] lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's . . . own interests, unless: (1) the lawyer reasonably believes the representation will not be adversely affected; and (2) the client consents after consultation . . ."
2

SCR 3.10-1.16(a) provides in part that: "a lawyer shall not represent a client or, where representation has commenced, shall withdraw from representation of a client if... (1) the representation will result in a violation of the rules of professional conduct or other law[.]"
The Inquiry Tribunal charges that the Respondent violated SCR 3.130-1.7, and, or in the alternative, SCR 3.130-1.16(a)(1).
The Inquiry Tribunal hereby charges that the Respondent violated SCR 3.130-1.7 when the Respondent made the offer to dismiss the criminal charges against Dr. Cecil on the

express condition that, among other things, Dr. Cecil agree to stipulate as to probable cause for the indictment, and/or, Dr. Cecil dismiss the federal suit against the Respondent.
The Inquiry Tribunal hereby charges that the Respondent violated SCR 3.130-1.16(a)(1) by failing to make a motion to withdraw as the attorney of record on behalf of the Commonwealth of Kentucky in the criminal case after Dr. Cecil filed the federal case against the Respondent.
Count H
The Inquiry Tribunal realleges and reaffirms each and allegation contained above in Count I.
3

SCR 3.130-3.4 states in part that "[a] lawyer shall not: . . . (~ present, participate in presenting, or threaten to present criminal . . . charges solely to obtain an advantage in any civil or criminal matter."
The Inquiry Tribunal charges that the Respondent violated SCR 3.130-3.4(q when the Respondent made the offer to dismiss the criminal charges against Dr. Cecil on the condition that, among other things, Dr. Cecil agree to stipulate as to probable cause for the indictment, and/or, Dr. Cecil dismiss the federal suit against the Respondent.
This the 15th day of June, 1998.
(S/ Garner L Turner)

Gardner L. Turner
CHAIR, INQUIRY TRIBUNAL

4

0
R. DAVID STENGEL
COMMONWEALTH'S ATTORNEY
514 WEST LIBERTY(502) 595-2900

FAX (502) 595-4650
March 26, 1997

Honorable David Vish
Parrent. and Vish
700 Kentucky Home Life Building
Louisville, Kentucky 40202

VIA: Fax Transmission to (502) 587 -7836
Re: Commonwealth of Kentucky vs Bennett Cecil

Dear Mr. Vish:
I am writing to notify you that any and all offers previously made by the commonwealth are hereby revoked.
The Commonwealth now offers to *dismiss without* prejudice the above *referenced* indictment an the following conditions:
1. *The* defendant pays $5700.00 by 01/27/97.

2. The Defendant stipulates as to probable cause for the indictment.

3. The Defendant: make a *motion dismissing the complaint* filed in Federal Court naming Laura L. Witt, Debra Cecil *and the* Honorable Irv Foley as defendants.

This offer will remain open until the next hearing date of March 27, 1997 and then withdrawn if not accepted.

Sincerely,
(S/Laura L Witt),
LAURA L. WITT
Assistant Commonwealth's Attorney

LLW/aa

(EXHIBIT F)
PARRENT & VISH
ATTORNEYS AT LAW
KENTUCKY HOME LIFE BUILDING
239 SOUTH FIFTH STREET, SUITE 700
Louisville, KENTUCKY 40202
(502) 584-750041'
Facsimile 587-7036
Homer PARRENT IIICOUNSEL
David L. Vish HOMER PARRENT, JR.
A. WHITNEY THACKER
March 3,1997

Ms. Laura Witt -
Commonwealth Attorney Office
514 West Liberty Street
Louisville, KY 40202

RE: Commonwealth v Bennet D. Cecil

Dear Ms. Witt:
This will acknowledge receipt of your voice mail on Monday, March 3, 1997 during your lunch break. I understand you will be in trial through the balance of this week and therefore hopefully on the week of March 10th we can meet and discuss the enclosed discovery that I am sending you.
First of all, I would like to address those matters whereby Dr. Cecil is alleging that Mrs. Cecil was untruthful with the Grand Jury. They are as follows and keep in mind this is not an all inclusive list:
1. Debra said that she had documented $150,000.00 in Ben's income from January 1, 1996 through May 31, 1996. Dr. Cecil f eels this is not true. I enclose for your benefit a copy of Dr. Cecil's January 1st through May 31, 1996 income statement whereby he had made approximately $75,399.00. 1

also enclose the month ending September 30, 1996 showing $98,475.00. Therefore, it appears that Mrs. Cecil overstated the sum by a minimum of $50, 000. 00 in an effort to procure this indictment (or $75,000.00 used in the May 31st document). Keep in mind that the documents that I have enclosed were submitted at the Commissioner's Hearing prior to her December 12th appearance before the Grand Jury.

2. Debra Cecil further told the Grand Jury that her last support payment was April of this year. Not true. I refer you first to your own response to the Courts Order of Discovery at page 3 whereby you found from May, of 1996 to November of 1996 Ben had paid $2,994.52. Additionally, our proof at trial will show that Ben was making health insurance premiums in an approximate amount of $520.00 from his time his practice was shut down by Debra's garnishment i.e. May 20, 1996 through year end, not to mention all

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FARRENT &VISH
Ms. Laura Witt
March 4, 1997
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the numerous VA payments that he made. She further said that she had received nothing from April through August when in fact not only your documents, but my proof attached will show otherwise.

3. 1 refer you to that portion of the Grand Jury tape where she that from the time period of May 1, 1996 to November of 1996 the total amount of arrearage would be $19,227.78. Even your child support figures differ from that severely. Again, at the time this letter is being written we still don't know what Judge Shake is going to do with respect to the Commissioner's Order, he may give us some relief, he may not, he may rule in Debra's favor, but in any case she, like you, was aware that the

matter was pending before the court via the Commissioner's Hearing.

4. Debra stated that he quit his practice in May essentially to take the summer off and begin working at a reduced income level. She stated he was making over $300,000.00 a year. Again at the Commissioner's Hearing Debra Cecil was well aware what Dr. Cecil had made for 1996 from his evidence and further she was well aware of the psychiatric problems that he had been having. In fact, she had moved to restrict visitation based on his emotional and psychiatric difficulties. To state that he quit his practice to take the summer off is simply not true, nor is it supported by any documentation that she could provide you. (See the August 19, 1996 note from Dr. Schrodt in your discovery).

5. Debra Cecil further stated to the Grand Jury that Dr. Cecil had given his retirement accounts to the government. obviously Dr. Cecil disputes this. Because he was unable to pay his back taxes, maintain the $70,000.00 per year in alimony and child support that he had been paying Debra, and his partners and his attorney's fees, the IRS in fact seized his retirement account. Dr. Cecil states that Debra kept all of her retirement accounts, her $190,000.00 home (she subsequently sold) and her $40,000.00 in common stocks and bonds, some of which was non-marital not to mention household furnishings.

6. Debra Cecil further contends that she put Dr. Cecil through medical school. I urge you to review the tax returns during the parties marriage at that time including the school loans that he obtained and whether or not Dr. Cecil worked. Dr. Cecil contends that Debra did not put him through medical school.

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7. Debra Cecil also stated that Dr. Cecil ignored the fact that he was to pay $3,000.00 maintenance. As stated in our pre-trial conference on Friday, January 28, 1997, he showed that Dr. Cecil had paid over $291,000.00 in child support and maintenance and health insurance premiums and her attorney's fees. She further mislead the Grand Jury by referencing a prior Commissioner's Hearing that he was ordered to keep the children in a private school when in fact that was not the final order as you cited in your discovery requirement. Again, I ask you to carefully review your own discovery to me sent on February 10th and show me where in the Findings of Fact and Conclusions of Law, the final Order, that Dr. Cecil was required to maintain private schooling. I further challenge you to review Dr. Cecil's divorce file and find one contempt motion in there by Judge Shake that he was found in contempt of court for his failure to pay child support and maintenance. It wasn't until the February of 1996 he began experiencing financial difficulties which at a time caused him to get behind, for the first time in his child support and maintenance obligations to Debra. To suggest to the Grand Jury otherwise is false. Further, Debra was aware that Dr. Cecil's income had decreased 28% for the first part of 1996 versus 1995.

8. 1 am further advised that Debra states she received no money from the trial and she has been in Court four years. Dr. Cecil's records reflect that she has received the benefit of over $291,000.00 as stated above, not to mention the award of the parties home, all furnishings and her remaining retirement account.

9. Further, Debra stated that when Dr. Cecil moved out of the house, he bought a $300,000.00 home (it was $265,000.00) and then gave it to the IRS. Again, Debra has deposed the IRS agent, (through her attorney) has seen the notice of levy and knows that the IRS properly executed on same. Further, I would like to see that Dr. Cecil allegedly "blew like a

$100,000.00 within six months of moving out of my house in 1992."
10. 1 think it has been clear to Debra throughout this proceeding, based on all of the documentation and depositions that have been taken of Dr. Cecil's psychiatric condition, to state that he is not guilty of non-support or persistently failed to pay same which resulted in this indictment.
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I would like to meet with you at your earliest convenience to further discuss these matters and to answer any questions you may have. Could we try to meet on Monday, March 10th, because it is Dr. Cecil's day off?
Sincerely,

(S/David L. Vish

DLV/pgc
cc: Dr. Ben Cecil C:\wp5I\d@te\dvcas*s\wfttJtr

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(EXHIBIT G)
OFFICE OF
R. DAVID STENGEL
COMMONWEALTH's ATTORNEY
514 West LIBERTY (502) 595-2300
LOUISVILLE, KENTUCKY 40202-2887 FAX
(502) 595-4650

April 21, 1997

Bennet D. Cecil, M.D.
2204 Eastbridge Court
Louisville, KY. 40223

Dear Dr. Cecil,
As Lincoln pointed out "Any person who represents himself has a fool for a client."
I am unaware of any '"absolute right to file a formal complaint" that you or anyone else has.
I suggest that you practice medicine, not law, and continue to pay your child support obligations.
You may look forward to hearing from me until the cows come home. It will not happen.
This is my last correspondance to you.
Sincerely

(S/R. David Stengel)

Commonwealth's Attorney RDS/css

(EXHIBIT H)
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

BENNET D. CECIL
PLAINTIFF
V CIVIL ACTION NO. 3:96 CV-8 I O-R
LAURA WHITT, et al
DEFENDANTS
MEMORANDUM IN SUPPORT OF
MOTION FOR SANCTIONS PURSUANT TO RULE 11

Come the defendant Laura Whitt, by and through counsel, and for her memorandum in support of motion for sanctions, states as follows:

INTRODUCTION

The plaintiff in this action has alleged in his complaint that the defendant Laura Whitt, acting in her role as an assistant commonwealth's attorney, prevented the plaintiff from testifying before the grand jury examining his actions, that she conspired to maliciously prosecute him, and that she lied to the grand jury in order to obtain an indictment.

ARGUMENTS

1. RULE 11 APPLIES TO PRO SE LITIGANTS Rule I I (b) of the federal rules of civil procedure provides in part as follows:

By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion or other paper, an ... unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, . . . (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new

Rule I I specifically states that it applies to non-represented parties as well as attorneys. Numerous reported cases make it clear that when pro se litigants are in violation *of* Rule 11, sanctions should be imposed. *See, Golyar v. McCausland,* 738 F.Supp 1090 (W.D.Mich. 1990); *Warren v. Guelker,* 29 F.3d 13 86 (9" Cir. 1994); *Simpson v. Lear Astronics Corp.,* 77 F.3d 1170 (9' Cir. 1996). While it is true that the pleadings *of pro se* litigants are held to a lower standard than those prepared by counsel, *Hilgeford v. Peoples Bank* 776 F.2d 176 (7' Cir. 1985), it is also true that, "Rule 11, however, 'appl[ies] to anyone who signs a pleading, motion or other paper.'" *Vukadinovich v. McCarthy,* 901 F.2d 1439 (7 1h Cir.

1990). That should be particularly true in this case, because the plaintiff is not an inmate or an unsophisticated indigent, as so many pro se litigants are, but a medical doctor who is clearly capable *of* comprehending the law.

11. PLAINTIFF'S CLAIM AGAINST LAURA WHITT IS NOT WARRANT91)

Laura Whitt is clearly entitled to absolute prosecutorial immunity for the actions the plaintiff alleged she took. It is well settled that prosecutors enjoy absolute immunity for all actions they perform in a quasi-judicial role that are "intimately associated with the judicial phase of the criminal process." *Imbler v. Pachtman,* 424 U.S. 409, 430-31, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976); *Joseph v. Patterson,* 795 F.2d 549 (6th Cir. 1986).

Kentucky courts have long recognized the doctrine *of* absolute prosecutorial immunity when the prosecutor was acting within the scope *of* his prosecutorial duties. *Dixon v. Cooper,* Ky., 109 Ky. 29, 58 S.W. 437 (1900); *Mitchell v. Rippy,* Ky., 82 Ky. 516 (1885).

In this case, there is no allegation that Laura Whitt, was acting in an investigative. capacity or outside the scope *of* her prosecutorial duties. All *of* the plaintiff's allegations concer actions Laura Whitt allegedly took in obtaining a grand jury indictment against the plaintiff, obviously well within her role as a prosecutor. Prosecutors are entitled to absolute immunity even when acting without a good faith belief that any wrongdoing has been committed by the plaintiff. *Joseph v. Patterson,* 795 F.2d 549, 557 (6th Cir. 1986).

Prosecutors are even entitled to absolute prosecutorial immunity for withholding evidence or creating and proffering perjured testimony! *Rose v. Bartle,* 871 F.2d 331 (3rd Cir. 1989) (prosecutor's solicitation of perjured testimony for use in grand jury is within prosecutorial immunity); *Casey-El v. Hazel,* 863 F.2d 29 (8th Cir. 1988) (bad faith withholding of exculpatory evidence); *Campbell v. Main,* 787 F.2d 776 (1 st

Cir. 1986) (bad faith withholding of exculpatory evidence); and *Fullman v. Grakkick* 739 F.2d 553 (1 Ith Cir. 1984).

111. THE PLAINTIFF HAS VIOLATED RULE 11 AND SHOULD BE SANCTIONED

As shown above, the plaintiffs claims are not warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. The plaintiff has not shown that he is even aware of the existence of prosecutorial immunity, proving that he could not have made a reasonable inquiry into the law. Plaintiff s personal belief in the rightness of his action, even if sincere, is not sufficient. "[S]anctions are warranted under Rule I I when a litigant's 'mental state [is not] based upon a reasonable inquiry, objectively analyzed, into the basis for the facts alleged and into the law.'" *U.& Ex Rel. Verdone v. Cir. Courifor Taylor Cty.*, 851 F.Supp. 345, 352 (W.D. Wis. 1993).

CONCLUSION

Laura Whitt has shown that the plaintiff has made unwarranted claims against her without making a reasonable inquiry into the law as required by Rule I I (b). 3

WHEREFORE, the defendant, Laura Whitt, requests that the court sanction the plaintiff by an order directing the plaintiff to pay the defendant's reasonable attorney's fees and her other expenses incurred in this matter.

Respectfully submitted,

A.B. CHANDLER III
ATTORNEY GENERAL

BY: STUART W. COBB
ASSISTANT ATTORNEY GENERAL
OFFICE OF ATTORNEY GENERAL
CIVIL AND ENVIRON. LAW DIV.
700 CAPITOL AVENUE
FRANKFORT, KY 40601

TELEPHONE NO.: (502) 564-7600
FAX NO.: (502) 564-2894

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CERTIFICATE OF SERVICE
I hereby certify that a true copy of the foregoing was served, first class mail, postage prepaid, this _ day of April, 1997, upon the following:
Bennet D. Cecil
2204 Eastbridge Court
Louisville, Ky. 40223

Edward K. Black
Moloney& Black
200 South Fifth Street
Suite 402 South
Louisville, Ky. 40202

Debra Cecil
4967 Brownsboro Road
Louisville, Ky. 40214

S/Stuart W. Cobb

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

BENNET D. CECIL
PLAINTIFF
V. CIVIL ACTION NO. 3:96 CV-810-R
LAURA WHITT, et al
DEFENDANTS)
MOTION FOR SANCTIONS PURSUANT TO RULE 11

Come the defendant Laura Whitt, by and through counsel, and move this court to sanction the plaintiff for violation -of F.R.C.P. 11 (2). Specifically, the plaintiff s claims against Laura Whitt are not warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. The defendant's memorandum in support hereof is attached hereto.
Respectfully submitted,

A.B. CHANDLER III
ATTORNEY GENERAL
S/ STUART W. COBB

BY: STUART W. COBB
ASSISTANT ATTORNEY GENERAL
OFFICE OF ATTORNEY GENERAL
CIVIL AND ENVIRON. LAW DIV.
700 CAPITOL AVENUE
FRANKFORT, KY 40601
TELEPHONE NO.: (502) 564-7600
FAX NO.: (502) 564-2894

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION
BENNET D. CECIL
PLAINTIFF
V. CIVIL ACTION NO. 3:96 CV-8 I O-R
LAURA WHITT, et al
DEFENDANTS
NOTICE OF INTENTION TO SEEK SANCTIONS FOR VIOLATIO
OF RULE 11. FEDERAL RULES OF CIVIL PROCEDU

Pursuant to F.R.C.P I I ©(1)(A), you are hereby given notice that unless your complaint against defendant Laura Whitt is dismissed, or appropriately amended, said defendant will, on or after 24 days following this notice, file her attached motion for sanctions against you for violating Rule 11, Federal Rules of Civil Procedure, which provides in pertinent part:

By presenting to the court a pleading any attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief,

formed after an inquiry reasonable under the circumstances

the claims. .

and other legal contentions therein are warranted by existing law or by the nonfrivolous argument for the extension, modification, or reversal of existing law

or the establishment of new law.

You have violated this provision of Rule I I by filing the instant suit against the defendant Laura Whitt contrary to the authorities cited below: Laura Whitt is clearly entitled to absolute prosecutorial immunity for the actions You alleged she took. It is well settled that prosecutors enjoy absolute immunity for all actions they perform in a quasi-judicial role that are "intimately associated with the judicial phase of the criminal process." *In7bler v. Pachtman,* 424 U.S. 409, 430-31, 96 S.Ct. 984,47 L.Ed.2d 128 (1976); *Joseph v. Pallerson,* 795 F.2d 549 (6th Cir. 1986). Seeking an indictment from a grand Jury is clearly well within her function as a prosecutor. Failure to dismiss after being put on notice of the clearly established law will be interpreted as pursuing this action in bad faith.

This notice is issued this day of April, 1997.

Respectfully submitted,

A.B. CHANDLER III

ATTORNEY GENERAL

S/ STUART W. COBB

BY: STUART W. COBB
ASSISTANT ATTORNEY GENERAL
CIVIL AND ENVIRONMENTAL LAW DIV.
700 CAPITOL AVENUE
FRANKFORT, KY 40602-2000
TELEPHONE NO. (502) 564-7600
FAX NO. (502) 564-2894
COUNSEL FOR DEFENDANT
LAURA WHITT

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served, first class mail, postage prepaid, this 7THday of April, 1997, upon the following:

Bennet D. Cecil
2204 Eastbridge Court
Louisville, Ky. 40223

Edward K. Black
Moloney & Black
200 South Fifth Street
Suite 402 South
Louisville, Ky. 40202

Debra Cecil
4967 Brownsboro Road
Louisville, Ky. 40214

(S/ STUART W. COBB)
Stuart W. Cobb

This attached motion will not be filed with the Court until plaintiff has had at least 24 days to withdraw or correct the complaint.